IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4880 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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A M VASAVADA - Petitioner(s)
Versus
CHAIRMAN & 2 - Respondent(s)

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Appearance :
MR HJ NANAVATI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
MR MD PANDYA for Respondent(s) : 2,
RULE NOT RECD BACK for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 06/12/2007

ORAL JUDGMENT

1. The short facts of the case appears to be that the petitioner was appointed on the post of

Technical Assistant on temporary basis vide order dated 07.07.1954 by the Government of Saurashtra and thereafter, he was also appointed on probation on such post of technical assistant vide order dated 28.09.1954 read with the order dated 01.10.1954. It appears that during the said period, Saurashtra Electricity Board was constituted and as per the petitioner, he was placed in service of Saurashtra Electricity Board whereas, as per the respondent Board, his appointment for all purposes was in Saurashtra Electricity Board. It appears that thereafter, the petitioner continued in service and as per the respondent Board, the representation was made by the Employees Union of Ex-Saurashtra Government Employees to give option to join Contributory Provident Fund Scheme (hereinafter referred to as “CPF Scheme”) and ultimately, the Board had agreed to give such option and that out of 800 employees, 300 employees opted for CPF Scheme in the Board. It appears that on 24.06.1971, the petitioner also submitted the option form and opted to continue with the existing benefit of the CPF Scheme to the employees of the Electricity Board. The contribution has also been made by way of deduction from the salary of the petitioner and the said position continued upto 1982. He was paid the accumulated amount in the CPF at his credit and also the gratuity. It is the case of the petitioner that such payment was accepted

under protest and as the petitioner is not paid the pension as if the Government employee, the present petition.

2. Mr. Nanavati, learned counsel appearing for the petitioner has declared before the Court that the petitioner is pressing the relief only for the pensionary benefits and other reliefs are not pressed and therefore, such reliefs are not required to be considered.

3. Heard Mr. Nanavati, learned counsel appearing for the petitioner and Mr. M.D. Pandya, learned counsel for the respondents.

4. The contention raised on behalf of the petitioner appears that his appointment was as the Government Employee by the Government of Saurashtra and therefore, he would be governed by the rules governing pension for the employees of State Government, whereas as per the respondent, the appointment of the petitioner for all purposes was for Saurashtra Electricity Board and subsequently, for all purposes, the petitioner was treated as the employee of the Electricity Board including for his birth in the parent cadre, the promotion thereafter, and therefore, for the employee of Electricity Board, the options were given and the petitioner opted for such scheme and the payment is also made at the time of retirement and the gratuity amount. Therefore, it has been submitted on

behalf of the respondent that the petitioner cannot be granted the benefit as if the Government employee.

5. It deserves to be recorded that after the present petition was admitted, similar relief was prayed by one of the persons viz. Jaswantlal M. Shah who was Assistant Secretary in the Electricity Board by preferring Special Civil Application No. 7956 of 1993 before this Court. This Court (Coram: J. N. Bhatt, J., as he then was) vide order dated 13.04.1994 passed the following order which reads as under:

> *"The petitioner has sought the main relief that the respondent authority should be directed to grant pension scheme to the petitioner and consequential retirement benefits.*
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> *The petitioner is a retired employee of the respondent-board who has retired as Assistant Secretary of the respondent-board and who had received all terminal benefits such as amounts standing to his credit in the contributory provident fund and gratuity on his retirement. He has filed this petition several years after having opted and enjoyed contributory provident fund scheme. There is no dispute about the fact that he has been given all terminal benefits available under the contributory provident fund scheme and he has also received gratuity. The petitioner thus has exercised the option for contributory provident fund scheme.*
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> *The contention of the petitioner that discrimination is done is also found not sustainable. In light of the facts of the*

present case, the petitioner has not been able to substantiate his plea that the respondent-authorities are adopting discriminatory treatment. Persons who are named in the petition have already opted for pensionable scheme; whereas the petitioner has opted for contributory provident fund scheme. Thus, there is no question of discrimination.

Having regard to the facts and circumstances emerging from the record of the present case, this Court has no hesitation in finding that this petition is without any substance. Therefore, it is required to be dismissed at inception.

In the result, the petition is dismissed. Notice is discharged."

6. The very petitioner preferred Writ Petition(Civil)No. 157/94 before the Hon'ble Apex Court seeking similar relief and vide order dated 12.02.1996, the said petition was dismissed by the Apex Court.

7. It may be recorded that thereafter, one Somchand Khemchand Makwana and five others in the capacity of ex-Saurasthra Govt. Employees who were absorbed in the Electricity Board on various posts had filed Special Civil Application No. 2198/92 seeking the relief of issuance of appropriate writ to quash and set aside the decision of the Board in denying the benefit to the ex-Saurashtra Government Employee to opt for pensionary benefit, after they having admitted of CPF benefit and a prayer was made

for the declaration that they are entitled to the pensionary benefit as at par with the other Government employees. The said petition was considered by this Court (Coram :S.D. Shah, J., as he then was) and on 20.12.1993, the following order was passed:

> *"The petitioners wee serving as permanent employees of State of Saurashtra. On reorginisation of the State, the petitioners came to be absorbed as employees of Gujarat Electricity Board, respondent herein. It is the case of the petitioners that the respondent Board has called for options from its employees calling upon them either to opt for the benefit of pension scheme or to opt for Contributory Provident Fund Scheme and they have already retired from service and have availed of the benefits flowing from such scheme. It is not disputed before this Court that all benefits available to the employees on the retirement under the CPF Scheme are already given to them. However, the grievance which is made in this petition is to the effect that they ought to have been provided opportunity to change their option from CPF Scheme to Pension Scheme and since they are not permitted to change their option, the action of the respondent Board is arbitrary and violative of Article 14 of the Constitution of India.*
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> *It is submitted by Mr. T.R. Mishra, learned Counsel for the petitioners that since the Pension Scheme is found to be more favourable to the employees on experience, a financial benefit which would accrue to the employees under such a scheme should not be denied to the retired employees by permitting them to opt for pension scheme. He has submitted that thought it is true that it would involve some financial*

repercussions and G.E.B. Shall have to shoulder more financial burden, these factors should not weigh either with G.E.B. Or with the Court and the petitioners should be permitted to opt for pension Scheme by changing their option from C.P. F Scheme to Pension Scheme. The aforesaid submission is devoid of merits and shall have to be rejected. The Pension Scheme as well as C.P.F. Scheme was very much made known to the employees. A large number of employees opted for Pension Scheme while number of employees like the petitioners opted for C.P.F. Scheme. It is required to be noted that around 300 ex-Saurashtra State employees gave their option to join the C.P.F. Scheme of the organisation. Accordingly, under the Scheme, the commuted value of the pension in respect of such employees was credited to their C.P.F. account in accordance with the C.P.F. Regulations. On the retirement, whatever benefits were to them under the said Scheme, were granted to them. Under Section 7(1) of the C.P.F. Act, 1962, the employees, who have given their option to join C.P.F. Scheme are not allowed to change their option during the tenure of their service. In the present case, all petitioners and those employees mentioned at Annexure-A, have already retired and they have availed the benefit available to them under the C.P.F. Scheme. The Board has also vide its communication dated 11th July, 1991, informed Mr.Sanat Mehta, who has espoused the cause of the petitioners that the case of the petitioners for permitting them to change their option from C.P.F. Scheme to Pension Scheme was considered by the Gujarat Electricity Board in its meeting dated 23rd March, 1991. At that time, it taken into consideration that if such a proposal is accepted, there would be increased financial responsibilities on the Board, which will have adverse consequence on the working of the Board and, therefore, after detailed

consideration, the proposal was not accepted. It was also taken into consideration that under the C.P.F. Scheme Act, option once exercised, cannot be permitted to be changed. Thus, having taking into consideration the relevant factors, the discretion is exercised and petitioners are not permitted to change their option. After their retirement they have availed the benefit available to them under the CPF Scheme, therefore, I do not see any reason to interfere in this petition. No case is made out for interference by this Court. The exercise of the power by the respondent Board cannot be said to be in any way arbitrary or discriminatory. Therefore, the petition fails, the same is summarily rejected. Notice is discharged"

8. Therefore, as such, the issue raised in the present petition can be said as covered on the aspects as to whether the petitioner who after retirement can be permitted to raise such question and second as to whether the employee who has opted for CPF Scheme to the pension scheme of the Government can be permitted to switch over to the Pension Scheme of the Government employee or not. If the aforesaid decisions of this Court are taken into consideration, the answer of both the aspects would be in negative.

9. Further, if the facts of the present case are independently considered, then it appears that it is an admitted position that the petitioner for all purposes was treated as in the employment of Saurashtra Electricity Board. Not

only that, but from the cadre of Technical Assistant, various promotions were granted to the petitioner in the Saurashtra Electricity Board as its own employee and at the time of retirement, the petitioner reached to the post of Chief Engineer and has retired accordingly. Further, in the year 1971, the petitioner opted for CPF Scheme and the contribution came to be made accordingly from the pay of the petitioner till retirement.

10. The contention on behalf of the petitioner that under compelling circumstances, the petitioner was made to submit the option form cannot be entertained after atleast 14 years from the submission of the declaration form when the present petition came to be filed or even after the deduction having been made and no grievance is raised by the petitioner at the relevant point of time for CPF. The option form which is produced on page 53 at Annexure-1 together with the affidavit in sur-rejoinder of the respondent Electricity Board is not under protest and therefore, the stand taken by the petitioner that the option form was submitted under compulsion or compelling circumstances cannot be accepted. Further in any case, such situation continued for a period of about more than 10 years and the grievance as sought to be brought before this Court by the petitioner is after 3 years of his retirement from service.

11. Therefore, considering the facts and circumstances, such contention raised on behalf of the petitioner cannot be accepted. The aforesaid is coupled with the circumstance that the subsequent conduct on the part of the petitioner including permitting deduction for CPF Scheme and having taken benefit of the CPF Scheme until the petitioner reaches to the age of superannuation.

12. Even otherwise also, as the petitioner for all purposes was not only absorbed but was treated as employee of Saurashtra Electricity Board, and as the petitioner had also accepted such status by taking benefit of the promotions from time to time, it cannot be said that the petitioner was and is an employee of the Government and therefore, would be entitled to the benefit of the pension scheme of the Government.

13. In view of the above, the petition is meritless and therefore, dismissed. Rule discharged. I.R., if any, vacated.

(JAYANT PATEL, J.)

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